IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRP.No. 1959 of 1998(E)

RCA.32/1995 of ADDL.DISTRICT COURT, KOZHIKODE
RCP.137/1988 of RENT CONTROL COURT, & PRL.MUNSIFF COURT KOZHIKODE-II
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REVN. PETITIONER: SUPPLIMENTAL RESPONDENTS 4,5,6 AND
---------- RESPONDENT NO.2 IN THE APPEAL.

1. BEEVI, AGED 57 YEARS,
W/O. KIZHAVANA VEERAN KOYA,
RESIDING AT KIZHAVANA HOUSE
P.O.NALLALAM , AREEKAD, KOZHIKODE 27.

2. NAUSHAD, AGED 33 YEARS,
S/O. KIZHAVANA VEERAN KOYAN,
RESIDING AT NALLALAM AMSOM DESOM
OF KOZHIKODE TALUK,.

3. K.RAMLA, AGED 30 YEARS,
D/O. KIZHAVANA VEERAN KOYA,
RESIDING AT NALLALAM AMSOM DESOM
OF KOZHIKODE TALUK.

***4. VALAPPIL KOYANDI,**
S/O. KOYANKUTTY, RESIDING AT
NALLALAM AMSOM DESOM OF KOZHIKODE TALUK(DIED)

THE NAME OF THE 4TH PETITIONER IS STRUCK OFF FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER'S AS PER THE ORDER DT. 12.8.05 IN IA. 1953/05.

BY ADV. SRI.V.V.SURENDRAN

CRP. NO.1959/1998

RESPONDENTS: APPELLANTS 1 TO 6 AND RESPONDENTS 3 AND 7.
---------- IN RCA.

1. **K.LUBNA, AGED 31 YEARS,**
   D/O. K.ASSAN, RESIDING AT PANNIYANKARA AMSOM
   DESOM OF KOZHIKODE.

2. **K.LAYAK, AGED 30 YEARS,**
   S/O. K.ASSAN, RESIDING AT PANNIYANKARA
   AMSOM DESOM OF KOZHIKODE TALUK.

3. **K.SAHIR, AGED 28 YEARS,**
   S/O. K.ASSAN, RESIDING AT PANNIYANKARA,
   AMSOM DESOM OF KOZHIKODE TALUK.

3. **K.THARKI, AGED 26 YEARS,**
   S/O. K.ASSAN, RESIDING AT PANNIYANKARA,
   AMSOM DESOM OF KOZHIKODE.

5. **K.SANUVAS, AGED 24 YEARS,**
   S/O. K.ASSAN, RESIDING AT PANNIYANKARA
   AMSOM DESOM OF KOZHIKODE TALUK.

6. **K.MUHAMMED SELLA, AGED 22 YEARS,**
   D/O. K.ASSAN, RESIDING AT PANNIYANKARA
   AMSOM DESOM OF KOZHIKODE TALUK.

7. **V,.MOHANAN, VILLAGE EXTENSION OFFICER,**
   CHERUVANNUR CIRCLE, BLOCK DEVELOPMENT
   OFFICER, KOZHIKODE.

8. **HASEENA, AGED 28 YEARS,**
   RESIDING AT NALLALAM AMSOM DESOM
   OF KOZHIKODE TALUK.

BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.T.SETHUMADHAVAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/10/2007, ALONG WITH CRP NO. 1175 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP. NO.1959/1998

ORDER ON CMP. NO.3112/99, 3902/1998 IN CRP. NO.1959/1998

DISMISSED

30.10.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

CRP Nos.1959 of 1998 and 1175 of 2000

Order

Balakrishnan Nair, J.

CRP NO.1959 OF 1998

Petitioners 1 to 3 are the legal heirs of the original tenant, who died during the pendency of the proceedings before the Rent Control Appellate Authority. The 4th petitioner is the alleged sub-lessee. Respondents 1 to 6 are the landlords. The 7th respondent is the sub-lessee and the 8th respondent is one of the legal heirs of the original tenant. The brief facts of the case are the following :

2. The original rent arrangement started in 1967. The tenanted premises consist of three rooms. The landlords got the premises assigned in their favour in 1986. Thereafter, in 1988, the Rent Control Petition was filed. The rate of rent was Rs.75/- for the entire tenanted premises. The three rooms are having Door Nos.3/471, 3/472 and 3/476. The first two rooms are in the ground floor and the third room is in the upstairs of the building. Eviction of room No.3/471 was sought for the bona fide requirement of the husband of the first petitioner in the RCP. He proposed to start the business of steel vessels in the said

room. Apart from the ground under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act), grounds under Sections 11(4)(i) and 11(4)(ii) were also urged. The eviction of room No.3/476 was sought under Section 11(4)(i). It was contended that the room was sub-let to the Village Extension Officer, for housing the Village Extension Office. In relation to all the rooms, eviction under Section 11(2)(b) was also sought.

3. The original tenant resisted the application, denying the claim of bona fide need, the sub-tenancy as also the arrears of rent. The Rent Controller allowed the application in relation to all the three rooms under Section 11(2)(b) by order dated 31.10.1994. The claim for eviction on other grounds was rejected. The landlords appealed by filing RCA No.32/95. The Appellate Authority disallowed the claim for eviction under Section 11(3), of room No.3/471. But it allowed the eviction of room No.3/472 under Section 11(3). Also the eviction of room No.3/476 was allowed under Section 11(4)(i). The present revision is filed by the legal heirs of the tenant and one of the alleged sub-tenants, challenging the decision of the Appellate Authority in relation to room Nos.3/472 and 3/476.

4. The petitioners attacked the finding of the Appellate Authority in relation to room No.3/472 under Section 11(3) of the Act, mainly on two grounds. The first ground is that the need urged is not a bona fide need. At best, what can be said of the claim of the landlord concerned is only a desire to start some business. Secondly, it was contended that a vacant room was available with the landlords immediately after the filing of the RCP and the same was given to the existing tenant in 1990. So the claim of the landlords is hit by the first proviso to Section 11(3) of the Act.

4. In support of the first submission it was pointed out that the deposition of PW3 on whose behalf the eviction was sought under Section 11(3) of the Act would reveal that he has only a desire to start a business. The same is not sufficient for the purpose of eviction under Section 11(3). So, the appellate authority's order, granting eviction under Section 11(3) is untenable. The learned counsel took us through the evidence of PW3. Going by the evidence, it would appear that he feigns ignorance about everything. He also does not have any idea regarding the business he intends to start there. If the room is got vacated, he will think of starting some business. This is the way in which PW3 has spoken of his need for the room. The Rent Controller rejected the

claim of PW3 relying on the fact that he has a stage carriage business and also on the ground that when another room was available, the same was not utilised for starting the business. The Appellate Authority found that the fact that the claimant is already having a business, will not stand in the way of the bona fide need for starting another business. Regarding the availability of another room, which was let out to the existing tenant, the Appellate Authority held that it was only a stair case room, which is not sufficient for running a business. It was added to the adjacent room, which is already in the possession of another tenant and a new rent deed was executed by the said tenant. The tenanted premises, as a result, partake the additional space of the stair case room also. According to the learned counsel for the tenant, the finding of the Appellate Authority in this regard is not based on any evidence or materials on record. It is mainly made, relying on surmises and conjunctures. The learned counsel for the landlords, on the other hand, supported the above findings of the Appellate Authority. It is pointed out that when the evidence of PW1, the father of PW3 is read along with the deposition of PW3 and also the need mentioned in the notice as well as in the RCP, the claim of bona fide need is established. It is also pointed out that the Appellate Authority rightly

found that the stair case room is not sufficient for running any business.

6. We are of the view that the finding of the Appellate Authority that the running of a stage carriage business will not stand in the way of starting another business, has to be upheld and further, going by Ext.B1, it is clear that what is let out is only a stair case room which, in normal course, will not be sufficient for running a business in steel vessels or utensils. The facts themselves speak about the above position. But, we are of the view that the need urged by the landlord PW3 cannot be found as a bona fide need to satisfy the claim under Section 11(3). The learned counsel for the landlords pointed out that this Court may not re-appreciate the evidence and substitute its decision for that of the Appellate Authority. But, since the findings of both the authorities on this point are divergent, we are fully justified in referring to the evidence and finding out whether the decision of the Appellate Authority suffers from any illegality, impropriety or irregularity. The powers of this Court under Section 20 of the Act are wider than its powers under Section 115 CPC. Going by the deposition of PW3, it cannot be concluded that he was in bona fide need of a room for starting a business. As rightly pointed out by the learned counsel for the revision petitioners, at best, what is manifested is only

a desire which cannot take the place of a need. See the decision of the Division Bench of this Court in **Kurian v. Prathapan** (1992(2) KLT 248). The relevant portion of the said decision reads as follows :

> *"But, deciding the bona fides of the petitioner, the said aspect is one of the predominant circumstances to be taken into account. Bona fides being a condition of mind, may not be capable for direct evidence, necessarily, therefore, the same is a matter for inference from circumstances. A mere desire cannot amount to bona fide need within the meaning of Section 11(3) of the Act. The need must be genuine and the same should be tested against the attending circumstances and see whether a person placed in the position of the petitioner could have felt the need alleged by the petitioner."*
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> (emphasis supplied)

Essentially, whether the claim is made based on a bona fide need or it is only a desire, is a finding of fact, which has to be decided, based on the materials on record. We find it difficult to accept the contention of the learned counsel for the landlords that when the evidence of PW3 is read along with the evidence of PW1 and the pleadings, it will project the bona fide need. The only

inference that is possible from the evidence of PW3 is that he does not have any need, but only a desire to start some business. Thus, the finding of the appellate authority on this point is illegal, irregular and improper. So, we set aside the finding of the Appellate Authority that PW3 bona fide requires room No.3/472 for starting a business for him.

7. The next point to be considered is whether the finding of the Appellate Authority that the ground under Section 11(4)(i) is proved in relation to room No.3/476. The Appellate Authority relied on two materials to arrive at the said finding. One is the Commissioner's report, which is marked is Ext.C1. The Commissioner, when visited the room found that the board of "Village Extension Office", was hung in front of it. Its shutters remained closed. The second material relied on by the Appellate Authority is Ext.A3. It is the certified extract of the records maintained by the concerned Panchayat. The tenant produced Ext.B7 to show that at the relevant time, it was occupied by the tenant. To disprove the same, the landlords summoned the relevant records for the examination of the Court. The Court examined the same and the relevant extract was got prepared and marked in evidence as Annexure A3. In Annexure A3, the name of the Village Extension Officer is shown as one of the

persons in occupation. That entry is rounded and initialled on 10.05.1990. The Appellate Authority found that the said entry was deleted on the said date as evident from the initialling. The learned counsel for the revision petitioners vehemently attacked the said finding. In support of that claim, he relied on Exts.B6 and B7. Ext.B7 relates to the period 1983-88 and Ext.B6 relates to the period 1988-93. They are certified extracts of the relevant occupancy register. There is no mention of the Village Extension Office or the Village Extension Officer in that. Therefore, the finding made by the Appellate Authority, relying on Ext.A3 is liable to be interfered with, it is submitted. The learned counsel also pointed out that since the Commissioner's report is an ex parte Commission report, as the inspection was conducted without notice to the tenant, the same could not be relied on, unless the Commissioner was examined. So, if the Commissioner's report is eschewed from consideration, then, in the face of Exts.B6 and B7, the finding of the sub-lease is liable to be reversed, it is submitted. The learned counsel for the landlords, on the other hand, pointed out that even if the Commissioner's report is eschewed from consideration, Ext.A3, which is a copy of the entry in the original records, which was produced in Court, has to be relied upon. We feel that the view

taken by the Appellate Authority on this point is a plausible view on facts. The two set of documents showing different state of affairs were produced. The Appellate Authority took the view that since Ext.A3 was a copy of the original document produced before Court and perused by it, the same is liable to be relied on. We feel that the said view cannot be described as perverse, warranting interference by this Court under Section 20 of the Act. But, the learned counsel for the revision petitioners would point out that there is no evidence on record to show that the sub-tenant was in exclusive possession of the tenanted premises to the exclusion of the tenant. In the absence of any such material, the finding of the Appellate Authority is untenable. The learned counsel for the landlords, on the other hand, would point out that once the landlord has discharged his initial burden of showing that somebody else was also in the tenanted premises, it was for the tenant to show the conditions of his occupation and show that he has not parted with the possession of the room in favour of the sub-tenant. We are in full agreement with the above submission of the learned counsel for the landlords. The relationship between the sub-tenant and the tenant is something within their exclusive knowledge. Once the landlord has succeeded in showing that somebody else was

occupying the room when the RCP was filed, it is for the tenant to explain the arrangement between them and to show that he has not parted possession in favour of the person found there, of the entire premises or any part of it. We, therefore, hold that the finding of the Appellate Authority that the eviction is liable to be ordered of room No.3/476 under Section 11(4)(i) is legal and valid. In the result, the CRP is disposed of, upholding the finding of the Rent Control Appellate Authority under Section 11(4)(i) in relation to room No.3/476 and setting aside the finding of the said Authority under Section 11(3) in relation to room No.3/472.

CRP No.1175 of 2000

8. This is the revision filed by the landlords against the rejection of claim of eviction of room No.3/471. As mentioned in the above Judgment, the eviction was sought for the use of the husband of the first petitioner to start a grocery business. Both the authorities, the Rent Controller as well as the Appellate Authority, rejected the claim. Mainly two grounds were relied on by the Appellate Authority to affirm the finding of the Rent Controller in this regard. The Appellate Authority found fault with PW2, who is the husband of the first petitioner herein for not producing the passport to show that he was

unemployed and therefore, he was in bona fide need of the room for starting the business. The Appellate Authority also noticed the statement of PW2 while he was in the witness box that he was harbouring the desire to start a business since six months back. The Appellate Authority, on noticing that the evidence was tendered in 1994, held that he was not having any need for starting the business in 1988, when the RCP was filed. The learned counsel for the petitioners attacked the above finding of the Rent Control Appellate Authority. We agree with the learned counsel on the submission that even assuming PW2 is employed elsewhere and is having good income, still, he can desire to come back and start a business in his native place. So, the non-production of the passport to prove that he was unemployed and was remaining in India, will not defeat the claim of PW2. But, the admission of PW2 that his desire or plans have a life of only six months preceding the date of deposition, will definitely defeat his claim. It would positively show that he did not have any need or desire to start a business in 1988, when the RCP was filed. This view taken concurrently by both the authorities, cannot be said to be perverse or one, which, no man in his senses will arrive at. Therefore, we are not justified in reversing the same in this revision filed under Section 20 of the Act. In the

result, the CRP fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

30.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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